

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

Civil Action No. 05-10917 PBS

THE HIPSAVER COMPANY, INC.,  
Plaintiff / Counterclaim Defendant,

V

**J.T. POSEY COMPANY,**  
**Defendant / Counterclaim Plaintiff.**

## PLAINTIFF'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND COSTS

Plaintiff, The HipSaver Company (“HipSaver”), respectfully moves for a hearing and Award of Attorneys’ Fees incurred by it in filing its motions to compel discovery under Fed. R. Civ. P. Rule 37(a)(2)(4) and for fees incurred in filing this motion for costs, altogether totaling \$34,797.50. As more fully set forth in the accompanying memorandum, HipSaver’s motions to compel resulted from a long, protracted discovery battle with Defendant, J.T. Posey, in which Posey chose delay rather than substantive discovery. This is a case where HipSaver not only prevailed (twice) but in which HipSaver prevailed against dilatory objections over seven months. Accordingly, pursuant to Federal Rule 37, an award of expenses, including attorney’s fees against Posey is entirely appropriate in this case.

CERTIFICATE PURSUANT TO CIVIL LOCAL RULES 7.1 and 37.1

I certify that counsel for the parties conferred by telephone on July 24, 2006, but were unable to resolve the issues identified in this Motion.

Respectfully submitted,

THE HIPSAVER COMPANY, INC.

By its Attorneys,

/s/ Courtney M. Quish

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Edward J. Dailey  
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Dated: 7.24.06

**CERTIFICATE OF SERVICE**

I certify that this document has been filed through the Electronic Case Filing System of the United States District Court for the District of Massachusetts and will be served electronically by the court to the Registered Participants identified in the Notice of Electronic filing.

/s/ Courtney M. Quish

July 24, 2006

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**DECLARATION OF COURTNEY M. QUISH IN SUPPORT OF PLAINTIFF'S  
MOTION FOR AN AWARD OF ATTORNEYS' FEES AND COSTS**

I, Courtney Quish, declare as follows:

1. I am an attorney with the firm Bromberg & Sunstein LLP and am admitted to practice in the District Court of Massachusetts. Together with Edward Dailey, I represent The HipSaver Company in the above-captioned case. I have personal knowledge regarding the facts stated herein.

2. I personally supervised the compilation and preparation of the chart, attached hereto as Exhibit A, that details the attorney and paralegal fees, which total \$34,797.50, incurred and billed by the law firm of Bromberg & Sunstein, in connection with HipSaver's motions to compel discovery. The billing attorneys are Edward J Dailey, (listed as "EJD") and myself, Courtney Quish (listed as "CQ").

a. Mr. Dailey has been practicing law for approximately 33 years. Mr. Dailey received his J.D. from Boston University in 1971. Mr. Dailey was admitted to

practice before the United States District Court of Massachusetts in 1972. Mr. Dailey's standard hourly rate is \$575.00.

- b. I have been practicing law for approximately 1 and a half years. I received my J.D. from the University of Michigan in December, 2004. I was admitted to practice before the United States District Court of Massachusetts in 2005. My standard hourly rate is \$225.00.
- 3. I have reviewed the fees billed by Bromberg & Sunstein to The HipSaver Company for the period ranging from 2/1/06 through 7/21/06 for services rendered in connection to the above captioned case. In my review, I isolated the time and resulting charge related to services specifically rendered in connection with the following:
  - a. The attorneys' fees incurred in connection with HipSaver's February 8, 2006, motion to compel, totaling \$9,190.00.
  - b. The attorneys' fees incurred in connection to Posey's renewed objections to Posey's motion to compel, totaling \$23,222.50.
  - c. The attorneys' fees incurred in connection with the preparation and drafting of this motion for costs, totaling \$2,385.00.

I hereby declare under the penalty of perjury that the foregoing is true and correct.

Executed this 24th Day of July, 2006.

/s/ Courtney Quish  
Courtney M. Quish

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EXHIBIT A  
Declaration of Courtney M. Quish in Support of Plaintiff's Motion for Costs

Date	Tkpr	Description	Billed Hrs	Billed Amt	Amt apportioned to relevant service
2/1/2006	EJD	Research time issues for Motion to Compel discovery for Posy failure to produce discovery documents	4.5	\$2,587.50	\$2,587.50
2/1/2006	CQ	Analyze strategy for motion to compel	0.4	\$90.00	\$90.00
2/2/2006	CQ	Research and analysis in furtherance of motion to compel	0.4	\$90.00	\$90.00
2/3/2006	CQ	Review parties' correspondence regarding discovery; review and analyze parties' interrogatories and document requests in preparation for drafting motion to compel; draft outline regarding same	1.6	\$360.00	\$360.00
2/5/2006	CQ	Research and analyze case law regarding discovery deadlines; draft motion to compel	3.2	\$720.00	\$720.00
2/7/2006	CQ	Research and analyze law regarding service of Requests; draft motion to compel and supporting memorandum; review and revise same	3.2	\$720.00	\$720.00
2/7/2006	EJD	Complete research, revise and edit Memorandum of Law in support of motion to compel document discovery	7.1	\$4,082.50	\$4,082.50
2/8/2006	CQ	Review and revise memorandum in support of motion to compel; file same	2.4	\$540.00	\$540.00
5/2/2006	EJD	Review Renewed Opposition to HipSaver's Motion to Compel, research, outline, and draft Reply Memorandum	7.3	\$4,197.50	\$4,197.50
5/2/2006	CQ	Review and analyze Posey's Response to HipSaver's Motion to Compel	0.4	\$90.00	\$90.00
5/3/2006	EJD	Revise, and edit Reply Memorandum re: outstanding document discovery	6.1	\$3,507.50	\$3,507.50
5/3/2006	CQ	Review and analyze Posey's response to HipSaver's motion to compel; review and revise HipSaver's motion in further support of its motion to compel; draft motion for leave to file reply; prepare exhibit for filing; draft letters enclosing same to court; file same	1.9	\$427.50	\$427.50
5/16/2006	EJD	Review magistrate judge's orders, outline issues for final discovery conference.	3.1	\$1,782.50	\$1,782.50
5/23/2006	EJD	Discovery conference w/ Mr. Morseburg, discussion w/ Ms. Quish re: same.	1	\$575.00	\$575.00
5/30/2006	EJD	Conference w/ Mr. Morseburg re: discovery issues on Plaintiff's Motion to Compel.	0.5	\$287.50	\$287.50
6/1/2006	CQ	Review and revise submission to Court regarding discovery disputes	0.7	\$157.50	\$157.50

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Declaration of Courtney M. Quish in Support of Plaintiff's Motion for Costs

6/1/2006	EJD	Prepare Status report to Magistrate Judge pursuant to court's order re: outstanding discovery requests to Posey.	6.1	\$3,507.50	\$3,507.50
6/5/2006	EJD	Complete Memorandum in support of motion to compel discovery	7.1	\$3,000.00	\$3,000.00
7/13/2006	CQ	Review and analysis regarding discovery requests in preparation for Friday hearing	2.2	\$495.00	\$495.00
7/13/2006	EJD	Retrieve and review pleadings for oral argument on Motion to Compel, outline oral argument	4	\$2,300.00	\$2,300.00
7/14/2006	EJD	Prep for and oral argument before MJ Collings re: motion to compel	3.9	\$2,242.50	\$2,242.50
7/14/2006	CQ	Review transcript of July 2006 hearing and related pleadings in preparation of motion hearing; attend motion hearing	2.9	\$652.50	\$652.50
7/17/2006	CQ	Prepare to draft motion for costs	0.2	\$45.00	\$45.00
7/18/2006	CQ	Review billing records in preparation of motion for costs	1.7	\$382.50	\$382.50
7/19/2006	CQ	Complete review of billing; draft motion for costs	3.9	\$877.50	\$877.50
7/20/2006	CQ	Draft motion for costs; draft memorandum in support thereof; draft statement in support of same	4.8	\$1,080.00	\$1,080.00
		<b>TOTAL</b>			<b>\$34,797.50</b>